

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF RECLAMATION  
Central Valley Project, California

CONTRACT BETWEEN THE UNITED STATES OF AMERICA AND  
COLUSA DRAIN MUTUAL WATER COMPANY  
PROVIDING FOR PROJECT WATER SERVICE AND  
AGREEMENT ON DIVERSION OF WATER

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PROVIDING FOR PROJECT WATER SERVICE AND AGREEMENT ON DIVERSION OF  
WATER

THIS CONTRACT, hereinafter referred to as "Contract," is entered into by THE UNITED STATES OF AMERICA, hereinafter referred to as the United States, made this \_\_\_\_ day of \_\_\_\_\_, 2004, pursuant to the applicable authority granted to it generally in the Act of June 17, 1902 (32 Stat. 388), and acts amendatory or supplementary thereto, including, but not limited to, the Acts of August 26, 1937 (50 Stat. 844), as amended and supplemented, August 4, 1939 (53 Stat. 1187), as amended and supplemented, including but not limited to Sections 9 and 14 thereto, July 2, 1956 (70 Stat. 483), June 21, 1963 (77 Stat. 68), October 12, 1982 (96 Stat. 1262), October 27, 1986 (100 Stat. 3050), as amended, and Title XXXIV of the Act of October 30, 1992 (106 Stat. 4706), all collectively hereinafter referred to as Federal Reclamation law, and COLUSA DRAIN MUTUAL WATER COMPANY, hereinafter referred to as the Contractor, acting pursuant to Sections 12003 and 12004 of the California Water Code, with its principal place of business in California;

WITNESSETH, That:

EXPLANATORY RECITALS

[1<sup>st</sup>] WHEREAS, the United States has constructed and is operating the Central Valley Project, California, for multiple purposes pursuant to its statutory authority; and

[2<sup>nd</sup>] WHEREAS, the Colusa Drain Mutual Water Company was formed to represent the numerous individual Water Users on the Colusa Basin Drain whose lands are within the Contractor's Service Area; and

[3<sup>rd</sup>] WHEREAS, Water Users of the Contractor are diverting water from the flow in the Colusa Basin Drain for agricultural use; and

[4<sup>th</sup>] WHEREAS, the California State Water Resources Control Board in its Decision D-1045 adopted November 13, 1961, determined that even though water is physically available in the Colusa Basin Drain the flows in the Colusa Basin Drain during certain times are needed to satisfy senior water rights along the Sacramento River and in the Delta below the mouth of the Colusa Basin Drain; and

[5<sup>th</sup>] WHEREAS, Decision D-1045 determined diversions from the Colusa Basin Drain could be made during those times provided an alternate source of water is made available to satisfy the senior water rights along the Sacramento River and in the Sacramento-San Joaquin Delta below the mouth of the Colusa Basin Drain, and the Board suggested the stored water from the Central Valley Project as a possible alternate source; and

[6<sup>th</sup>] WHEREAS, those Colusa Basin Drain Water Users diverting from the Drain are impacting the flow of the Sacramento River causing the Central Valley Project to make releases to meet the senior water rights of users along the Sacramento River and in the Sacramento-San Joaquin Delta below the mouth of the Colusa Basin Drain which are deprived of their water because of the Drain diversions; and

[7<sup>th</sup>] WHEREAS, the Contractor asserts their Water Users water rights on the Drain are not deficient; and

[8<sup>th</sup>] WHEREAS, the objective of this Contract is to (1) assure the Contractor that there is an alternate source of water available from the Central Valley Project which will be released into the Sacramento River to meet senior water rights along said River and in the Sacramento-San Joaquin Delta below the mouth of the Colusa Basin Drain that are depleted by the Contractor's diversion of water, and (2) assure the United States reimbursement by the Contractor for such release into said River, thereby eliminating objections by the United States to diversions of water from the Drain by the Contractor's Water Users pursuant to this Contract.

NOW, THEREFORE, in consideration of the performance of the herein contained provisions, conditions, and covenants, it is agreed as follows:

DEFINITIONS

1. When used herein, unless otherwise expressed or incompatible with the intent hereof, the term:

(a) "Basin-Wide Water Management Plan" shall mean the mutually agreeable Sacramento River Basinwide Water Management Plan, dated \_\_\_\_\_, developed by Glenn-Colusa Irrigation District, Maxwell Irrigation District, Natomas Central Mutual Water Company, Pelger Mutual Water Company, Princeton-Codora-Glenn Irrigation District, Provident Irrigation District, Reclamation District 108, Sutter Mutual Water Company, Anderson-Cottonwood Irrigation District, ~~M&T, Inc.~~, Meridian Farms Water Company, Reclamation District 1004, and the U.S. Bureau of Reclamation;

(b) "Charges" shall mean the payments for Project Water that the Contractor is required to pay to the United States in addition to the "Rates" specified in this Contract. The

Contracting Officer will, on an annual basis, determine the extent of these Charges. The type and amount of each Charge shall be specified in Exhibit D;

(c) “Colusa Basin Drain” or “Drain” shall mean an earthen drainage channel approximately 70-miles long beginning northeast of Willows, California, near the Sacramento River, extending southerly and flowing into the Sacramento River via the Knights Landing outfall gates located at the River and the Yolo Bypass via the Knights Landing Ridge Cut, and for purposes of this Contract shall include any tributaries to the Colusa Basin Drain within the Contractor’s Service Area;

(d) “Contractor’s Service Area” shall mean the area shown in Exhibit A as attached hereto which comprises the maximum area within which shares of stock of the Contractor may be issued and made appurtenant to the land pursuant to the Contractor’s Articles of Incorporation;

(e) “Crop Irrigation Requirement” shall mean the quantity of water consumptively used by each crop less the effective rainfall that each crop receives. For purposes of this Contract, the Crop Irrigation Requirement is specified in Exhibit B;

(f) “CVPIA” shall mean the Central Valley Project Improvement Act, Title XXXIV of the Act of October 30, 1992 (106 Stat. 4706);

(g) “Excess Lands” shall mean all lands in excess of the limitations contained in Section 204 of the RRA, other than those lands exempt from acreage limitation under Federal Reclamation law;

(h) “Eligible Lands” shall mean all lands to which Project Water may be delivered in accordance with Section 204 of the Reclamation Reform Act of October 12, 1982 (96 Stat. 1263), as amended, hereinafter referred to as RRA;

(i) “Full Cost Land” shall mean landholdings as described in Section 205(a) of the Act of October 12, 1982 (96 Stat. 1265);

(j) “Full Cost Rate” shall mean that water rate described in Sections 205(a)(3) or 202(3) of the RRA, whichever is applicable;

(k) “Ineligible Lands” shall mean all lands to which Project Water may not be delivered in accordance with Section 204 of the RRA;

(l) “Landholder” shall mean a party that directly or indirectly owns or leases nonexempt land, as provided in 43 CFR 426.2;

(m) “Noncrop Consumptive Use” shall mean that quantity of water that evaporates from water surfaces or is consumed by native vegetation while Irrigation Water is being conveyed to or from the Contractor’s irrigated acreage. For purposes of this Contract, the quantity of Noncrop Consumptive Use shall be assumed to equal 10 percent of the Crop Irrigation Requirement;

(n) “Project” shall mean the Central Valley Project owned by the United States and managed by the Department of the Interior, Bureau of Reclamation;

(o) “Project Water” or “Irrigation Water” shall mean water released from Project facilities pursuant to this Contract for the purpose of replacing water diverted by the Contractor from the Drain which is needed to satisfy the senior water rights along the Sacramento River and the Sacramento-San Joaquin Delta below the mouth of the Drain;

(p) “Rates” shall mean the payments for Project Water determined annually by the Contracting Officer in accordance with the then current applicable water ratesetting policies for the Project, as described in subdivision (a) of Article 5 of this Contract;

(q) “Secretary” or “Contracting Officer” shall mean the Secretary of the Interior, a duly appointed successor, or an authorized representative acting pursuant to any authority of the Secretary and through any agency of the Department of the Interior;

(r) “Water User” shall mean a shareholder of the Contractor whose shares cover lands within the Contractor’s Service Area and who diverts water from the Drain pursuant to one or more water right permits or licenses;

(s) “Year” shall mean the period from and including March 1 of each calendar year through the last day of February of the following calendar year.

#### TERM OF CONTRACT

2. (a) This Contract shall become effective April 1, 2004, and shall remain in effect until and including March 31, 2044: Provided, that under terms and conditions mutually agreeable to the parties hereto, renewals may be made for successive periods not to exceed 40 years each. The terms and conditions of each renewal shall be agreed upon not later than 1 year prior to the expiration of the then existing Contract.

(b) With respect to Project Water and the portions of this Contract pertaining thereto, upon written request by the Contractor of the Secretary made not later than

1 year prior to the expiration of this Contract, whenever, account being taken of the amount then credited to the costs of construction of water supply works, the remaining amount of construction costs of water supply work which is properly assignable for ultimate return by the Contractor as established by the Secretary of the Interior pursuant to (3) of Section 1 of Public Law 643 (70 Stat. 483), probably can be repaid to the United States within the term of a contract under subsection 9(d) of the 1939 Reclamation Project Act (53 Stat. 1187), the relevant portions of this Contract may be converted to a contract under said subsection 9(d) upon terms and conditions mutually agreeable to the United States and the Contractor. The Secretary shall make a determination 10 years after the date of execution of this Contract, and every 5 years thereafter, of whether a conversion to a contract under said subsection 9(d) can be accomplished pursuant to Public Law 643. Notwithstanding any provision of this Contract, the Contractor reserves and shall have all rights and benefits under Public Law 643.

~~This Contract shall be effective on the date first hereinabove written and shall remain in affect until and including March 31, 2044: Provided, That under terms and conditions mutually agreeable to the parties hereto, renewals of this Contract may be made for successive periods not to exceed 40 years each. The terms and conditions of each renewal shall be agreed upon not later than 1 year prior to the expiration of the then existing contract: Provided further, That upon written request by the Contractor of the Secretary made not later than 1 year prior to the expiration of this Contract, whenever, account being taken of the amount then credited to the costs of construction of water supply works allocated to irrigation, the remaining amount of costs so allocated which is properly assignable for ultimate return by the Contractor as published by the Secretary of the Interior pursuant to (3) of Section 1 of Public Law 84-643(70 Stat. 483), probably can be repaid to the United States within the terms of a contract under subsection (d), Section 9 of the Reclamation Project Act of 1939~~

~~(53 Stat. 1187), this Contract, insofar as it pertains to the furnishing of Project Water for agricultural use may be converted to a contract under said subsection (d) upon terms and conditions agreeable to the United States and the Contractor. Notwithstanding the provisions of this Contract, the Contractor reserves and shall have all rights and benefits under the Act of July 2, 1956.~~

(b) The Contractor's right to the beneficial use of water from the Drain shall not be disturbed so long as the Contractor fulfills all of its obligations under this Contract and any such renewal.

#### WATER RELEASED FOR THE CONTRACTOR

3. (a) Subject to the terms and conditions hereinafter stated, the Contractor may divert a water supply from the Drain for beneficial use by Water Users, and the United States shall replace with Project Water the quantity of water depleted from the Sacramento River system as a result of such diversion in accordance with subdivision (d) of this article: Provided, That the maximum quantity of Project Water released by the United States pursuant to this Contract shall not exceed \_\_\_\_\_ acre-feet in any Year and the Contractor's diversions from the Drain shall not deplete the Sacramento River System by more than \_\_\_\_\_ acre-feet in any Year absent a subsequent agreement between the Contractor and the Contracting Officer.

(b) The Contractor agrees that it or its Water Users receiving benefits under this Contract have or will obtain a water right permit allowing it or them to divert water from the Drain for agricultural purposes.

(c) The Contractor shall submit to the Contracting Officer on or before ~~April 1~~ **May 15** of each Year an estimate for that Year of the total number of acres to be irrigated by the Water Users, a map designating the location of those acres, the projected cropping pattern of those acres, and a list of the Water Users identifying their diversion points, their respective water right

permit or license numbers and the source and quantity of other water available to each Water User exclusive of this Contract as provided for in subdivision (g). The Contractor shall submit a final report to the Contracting Officer on or before July 1 showing any revisions to the estimate previously submitted. If, at any time, the Contractor determines acreage in addition to that specified in the final report will be irrigated that Year, the Contractor will report such additional acreage, the location and cropping pattern of that acreage, and source of water, and will submit payment for such additional acreage computed in accordance with this article and Article 5 to the Contracting Officer prior to the delivery of water to that acreage.

(d) The quantity of Project Water released shall be determined by the Contracting Officer. The quantity of Project Water for which the Contractor shall pay in accordance with Article 5, shall be based on the final report submitted by the Contractor as approved by the Contracting Officer and computed as follows: The Contracting Officer shall add the Crop Irrigation Requirements and the Noncrop Consumptive Uses for the total acreage reported and subtract from that quantity the amount of Contractor's water rights water for which the Contractor is to be credited pursuant to subdivision (e) of this article and water available from other sources pursuant to subdivision (g). The Crop Irrigation Requirement and the Noncrop Consumptive Use factor as specified in Exhibit B may be adjusted by written mutual agreement at 5-year intervals.

(e) The quantity of water rights water for which the Contractor shall receive credit shall be calculated each Year by the Contracting Officer based on monthly deficiencies specified in Exhibit C.

(f) For purposes of this Contract, the water rights of the Water Users are deemed to be deficient during the months of June, July, August, and September. Nothing herein contained shall require the Contractor to make any payment to the United States for water diverted from the Drain

pursuant to water rights permits or licenses during the period of October through May for beneficial use on the land shown on Exhibit A.

(g) The United States recognizes the right of the Contractor to acquire water from sources other than those of the United States for diversions from the Drain and its tributaries: Provided, That the acquisition and diversion of such water is consistent with California water law and the United States shall not be obligated to release Project Water to replace water acquired by the Contractor from such other sources.

(h) If the Contractor in any Year requests delivery of a quantity of Project Water through the Drain or its tributaries, such quantity shall be the subject of a separate contract.

#### POINTS OF DIVERSION-MEASUREMENT OF WATER

4. (a) The Water Users will divert water from the Drain and its tributaries at diversion points within the Contractor's Service Area in conformance with the Contractor's or its Water Users' respective water rights permits or licenses for agricultural use.

(b) ~~By April 1 of each Year the Contractor shall report to the Contracting Officer the total amount of acreage of each crop irrigated within the Contractor's Service Area by Water Users during the preceding Year, and the amount of water used each month computed in accordance with Exhibit B.~~ The Contracting Officer reserves the right to require measurement of (1) all water diverted from the Drain by the Water Users, (2) all water delivered to Excess Lands, and (3) all water made available to the Contractor from other sources such as water right permittees or licensees other than from the United States or groundwater, should the Contracting Officer determine measurement is necessary to carry out the provisions of this Contract.

(c) If the Contracting Officer determines such measurement is necessary the following provisions shall apply:

- (1) All measurement equipment shall be installed, operated, and maintained by the Contractor; and
- (2) The Contractor shall not modify, alter, remove, or replace diversion facilities or do any other act which would alter the effectiveness or accuracy of the measuring equipment installed unless and until the Contracting Officer has been notified and has approved the modification of such measuring equipment in such manner as may be necessary or appropriate. In the event of an emergency, the Contractor shall notify the Contracting Officer within a reasonable time thereafter as to the existence of the emergency and the nature and extent of such modification, alteration, removal, or replacement of diversion facilities; and
- (3) The Contracting Officer shall have full and free access at all reasonable times to inspect any measuring equipment installed and maintained by the Contractor pursuant to this Contract. If any measuring equipment is found to be defective or inaccurate, it shall be readjusted, repaired, or replaced without expense to the Contracting Officer. In the event that the Contractor neglects or fails to make such readjustments, repairs, or replacements within a reasonable time as may be necessary to satisfy the operating requirement of the Contracting Officer, the Contracting Officer may cause such readjustments, repairs, or replacements to be made and the costs thereof charged to the Contractor, which charge the Contractor shall pay to the Contracting Officer on or before January 31 of the Year following that in which the cost was incurred and in accordance with a statement furnished by the Contracting Officer.

#### RATES AND METHOD OF PAYMENT FOR WATER

5. (a) ~~The Contractor shall pay \$3.98 per acre foot for the quantity of Project Water calculated in accordance with Article 3 which is delivered to nonexcess lands, and shall pay \$9.72 per acre foot for the quantity of Project Water calculated in accordance with Article 3 which is delivered~~

~~to full cost lands: Provided, That these rates shall be redetermined annually in accordance with the Reclamation law and the then current agricultural rate policy of the Project.~~

The Contractor shall pay the United States as provided in this Article for all Project Water at Rates and Charges established in accordance with: (i) the Secretary's then current ratesetting policies for the Project; and (ii) applicable Reclamation law and associated rules and regulations, or policies: Provided, that if the Contractor desires to use Project Water for other than agricultural use the Rates and Charges set forth above will be adjusted by the Contracting Officer to the applicable Rates and Charges for such use. The Rates and Charges applicable to the Contractor upon execution of this Contract are set forth in Exhibit D, as may be revised annually. The Secretary's ratesetting policies for the Project shall be amended, modified, or superseded only through a public notice and comment procedure.

(b) On or before ~~April 1~~ May 15 of each Year, the Contractor shall pay fifty percent of the total amount due that Year based on the ~~April 1~~ May 15 estimate submitted by the Contractor and computed pursuant to Article 3 and subdivision (a) above. The remainder of the total amount due shall be paid on or before July 1 of each Year, or at such later date or dates as may be specified by the Contracting Officer, based on the July 1 final report submitted by the Contractor and computed pursuant to Article 3 and subdivision (a) above.

~~(c) The Contracting Officer shall advise the Contractor of the method by which the Contractor shall submit payments to the United States. The method could be by check or wire transfer directly to the Treasury Financial Communications System (TFCS).~~

~~(d) In the event the Contractor is unable, fails, or refuses to utilize the quantities of water required for the acreages submitted by the Contractor in the final report submitted pursuant to~~

subdivision (c) of Article 3, said inability, failure, or refusal shall not relieve the Contractor of its obligation to pay for the respective quantities of Project Water.

(c) Payments to be made by the Contractor to the United States under this Contract may be paid from any revenues available to the Contractor.

(1) All revenues received by the United States from the Contractor relating to the delivery of Project Water or the delivery of non-Project water through Project facilities shall be allocated and applied in accordance with Federal Reclamation law and the associated rules or regulations, and the then current Project ratesetting policies for irrigation water.

(d) The Contracting Officer shall keep its accounts pertaining to the administration of the financial terms and conditions of its long-term water service contracts and Sacramento River Settlement Contracts, in accordance with applicable Federal standards, so as to reflect the application of Project costs and revenues. The Contracting Officer shall, each Year upon request of the Contractor, provide to the Contractor a detailed accounting of all Project and Contractor expense allocations, the disposition of all Project and Contractor revenues, and a summary of all water delivery information. The Contracting Officer and the Contractor shall enter into good faith negotiations to resolve any discrepancies or disputes relating to accountings, reports, or information.

(e) The parties acknowledge and agree that the efficient administration of this Contract is their mutual goal. Recognizing that experience has demonstrated that mechanisms, policies, and procedures used for establishing Rates and Charges and/or for making and allocating payments, other than those set forth in this Article may be in the mutual best interest of the parties, it is expressly agreed that the parties may enter into agreements to modify the mechanisms, policies, and

procedures for any of those purposes while this Contract is in effect without amendment of this Contract.

(f) For the term of this Contract, Rates under the respective ratesetting policies for the Project will be established to recover only reimbursable operation and maintenance (including any deficits) and capital costs of the Project, as those terms are used in the then current Project ratesetting policies, and interest, where appropriate, except in instances where a minimum Rate is applicable in accordance with the relevant Project ratesetting policy. Proposed changes of significance in practices which implement the ratesetting policies for the Project will not be implemented until the Contracting Officer has provided the Contractor an opportunity to discuss the nature, need, and impact of the proposed change. The Contractor retains all rights to challenge the validity of Rates and Charges imposed pursuant to this Contract, including but not limited to operation and maintenance expenses and operation and maintenance deficits, in an appropriate administrative or judicial proceeding.

(g) Pursuant to the Act of October 27, 1986 (100 Stat. 3050), the Contracting Officer is authorized to adjust determinations of ability to pay every 5 years.

(h) Each payment to be made pursuant to subdivisions (a) and (b) of this Article shall be made at the office of the Bureau of Reclamation, Mid-Pacific Region, File No. 11546, P.O. Box 6000, San Francisco, California 94160-1546, or at such other place as the United States may designate in a written notice to the said Contractor. Payments shall be made by cash transaction, wire, or any other mechanism as may be agreed to in writing by the Contractor and the Contracting Officer. In the event there should be a default in the payment of the amount due, the delinquent payment

provisions of Article 16 shall apply. The Contractor shall not be relieved of the whole or any part of its said obligation by, on account of, or notwithstanding, as the case may be:

(1) Its failure, refusal, or neglect to utilize the quantities of water required for the acreages submitted by the Contractor in the final report submitted pursuant to subdivision (c) of Article 3, said inability, failure, or refusal shall not relieve the Contractor of its obligation to pay for the respective quantities of Project Water;

(2) The default in payment to it by any water user of assessments, tolls, or other charges levied by or owing to said Contractor;

(3) Any judicial determination that any assessment, toll, or other charges levied by or owing to said Contractor is irregular, void, or ineffectual; or

(4) Any injunctive process enjoining or restraining the Contractor from making or collecting any such assessment, toll, or other charges levied by or owing to said Contractor.

### ADJUSTMENTS

6. The Contracting Officer shall review the final report submitted by the Contractor pursuant to subdivision (c) of Article 3, and if any additional payment is required, the Contractor shall make such payment within 30 days of receipt of a written notice by the Contracting Officer. If it is determined an overpayment was made by the Contractor after review of the final report or by reason of a water shortage for purposes of this Contract as conclusively determined by the Contracting Officer, the overpayment shall be applied first to any accrued indebtedness arising out of this Contract then due and owing to the United States by the Contractor. Any amount of such overpayment then remaining shall, at the option of the Contractor, be refunded to the Contractor or credited upon

amounts to become due to the United States from the Contractor under the provisions hereof in the ensuing Year.

USE OF WATER FURNISHED TO CONTRACTOR

7. (a) Water diverted from the Drain which is replaced with Project Water shall not be delivered to Excess Lands ~~not covered by a recordable contract~~. The Contractor shall be deemed to be in breach of this Contract if at any time there is furnished to any Excess Lands ~~not covered by recordable contracts~~ a quantity of water which is greater than that quantity which the Contractor or its Water Users are entitled to divert absent the release of Project Water pursuant to this Contract.

(b) Water diverted from the Drain which is replaced with Project Water shall not be used by the Contractor for any purpose other than the commercial production of agricultural crops on tracts of land operated in units of more than 5 acres including livestock, incidental domestic use, or underground water replenishment without written consent of the Contracting Officer.

(c) Water diverted from the Drain which is being replaced with Project Water shall not be sold, exchanged, or otherwise disposed of except to a Water User for use within the Contractor's Service Area upon lands for which stock of the Contractor has been issued without prior written consent by the Contracting Officer.

(d) The Contracting Officer shall have the right of ingress to and egress from all lands shown in Exhibit A for purposes of assuring compliance with the Contract during the months of June through September of each Year.

(e) The Contractor will use all proper methods to secure the economical and beneficial use of water diverted from the Drain.

CHANGES IN CONTRACTOR'S BOUNDARIES OR. POINTS OF DIVERSION

8. While this Contract is in effect, no change shall be made in the Contractor's Service Area by inclusion, ~~or exclusion~~, annexation or detachment of lands, by dissolution, consolidation, merger, or otherwise, except upon the Contracting Officer's written consent.

UNITED STATES TO BE HELD HARMLESS

9. (a) The United States shall not be responsible for the control, carriage, handling, use, disposal, or distribution of water by the Contractor. The Contractor shall indemnify and hold the United States harmless from any and all damage and claims of damage of any nature whatsoever for which there is legal responsibility, including property damage, personal injury or death arising out of or connected with the Contractor's control, carriage, handling, use, disposal, or distribution of such water.

(b) The United States shall not be responsible for and makes no representation, warranty or assurance with respect to the quantity, quality, or origin of water in the Drain. The Contractor shall indemnify and hold the United States harmless from any and all damage and claims of damage arising out of or connected with any inadequacy in the quantity or quality of water in the drain as a result of this Contract or the Contractor's impairment of any existing rights on the Drain above the Knights Landing outfall gates.

(c) The United States shall not be responsible to the Contractor or its Water Users for the operation or maintenance of the Drain or cost of such operation and maintenance. The Contractor shall indemnify and hold the United States harmless from any and all damage and claims of damage arising out of or connected with the operation or maintenance of the Drain as a result of this Contract.

TEMPORARY REDUCTIONS

10. (a) The United States may temporarily discontinue or reduce the quantity of Project Water to be released for the Contractor as herein provided for the purposes of investigation, inspection, maintenance, repair, or replacement of any of the Project facilities or any part thereof necessary for the release of Project Water for the Contractor. So far as feasible, the United States will give the Contractor due notice in advance of such temporary discontinuance or reduction, except in case of emergency, in which case no notice need be given: Provided, however, That the United States shall use its best efforts to avoid any discontinuance or reduction in service.

(b) The Contractor shall reduce the acreage served under this Contract from the Drain accordingly, if such temporary reduction or discontinuance of service as described in subdivision (a) of this article is required.

WATER ACQUIRED BY CONTRACTOR OTHER THAN FROM THE UNITED STATES

11. The provisions of this Contract shall apply only to the quantity of water diverted by the Contractor from the Drain for which the United States releases Project Water pursuant to the terms hereof and the quantity of water acquired by or available to the Contractor other than from the United States shall not in any manner be subject to the provisions of this Contract.

AGREEMENT OF WATER QUANTITIES

12. (a) During the term of this Contract and any renewal thereof, this Contract shall constitute full agreement between the United States and the Contractor as to the impact of the Contractor's diversions of water from the Drain on the Project. It shall establish the quantities of Project Water the Contracting Officer shall release and the Contractor shall pay for and shall enable the Contractor to divert water from the Drain for beneficial use on the land shown on Exhibit A in

accordance with the terms and conditions of this Contract. Said diversion and use shall not be disturbed so long as the Contractor shall fulfill all of its obligations hereunder, and the Contractor shall not claim any rights against the United States in conflict with the provisions hereof.

(b) In the event of a general adjudication of rights to the use of water of the Colusa Basin Drain or the Sacramento River System, this Contract shall not jeopardize the rights or position of either party thereto or of any other person, and the rights of all such persons in respect to the use of such water shall be determined in such proceedings the same as if this Contract had not been entered into. The parties hereto agree to amend or terminate this Contract to conform with such adjudication if necessary.

(c) In the event that the California State Water Resources Control Board or a court of competent jurisdiction issues a final decision or order modifying the terms and conditions of the water rights of either party to this Contract in order to impose Bay-Delta water quality obligations, the Contractor and the United States shall promptly meet to determine whether or not to modify any of the terms of this Contract to comply with the final decision or order. If within 60 days of the date of the issuance of the final decision or order the parties are not able to reach agreement regarding either the need to modify this Contract or the manner in which this Contract is to be modified, the parties shall promptly retain a neutral mediator, experienced in resolving water right disputes, to assist the parties in resolving their dispute. The cost of the mediator shall be shared equally. In the event that either of the parties to this Contract determines that the parties will not be able to develop mutually-agreeable modification(s) to this Contract even with the assistance of a mediator, either of the parties to this Contract may attempt to resolve the impasse by seeking appropriate judicial relief including, but not limited to, filing a general adjudication of the rights to the use of water in the Sacramento River system. The foregoing provisions of this sub-article shall only apply to the incremental obligations contained within a final decision or order of the State Water Resources Control Board that reflects a

modification to the obligations imposed in State Water Resources Control Board Revised Water Rights Decision 1641 dated March 15, 2000, and its associated 1995 Water Quality Control Plan which, taken together, will be considered the baseline for the application of the provisions of this sub-article.

(ed) In the event this Contract terminates, the right of the parties to thereafter divert and use water shall exist as if this Contract had not been entered into.

#### COMPLIANCE WITH RECLAMATION LAWS

13. ~~The parties agree that the delivery of Irrigation Water or the use of the Federal facilities pursuant to this Contract is subject to Reclamation law, as amended and supplemented, including, but not limited to, the Reclamation Reform Act of 1982 (Public Law 97-293).~~

The parties agree that the delivery of Project Water for irrigation use or use of Federal facilities pursuant to this Contract is subject to Federal Reclamation law, including but not limited to, the Reclamation Reform Act of 1982 (43 U.S.C.390aa et seq.), as amended and supplemented, and the rules and regulations promulgated by the Secretary of the Interior under Federal Reclamation law.

#### WATER SHORTAGE AND APPORTIONMENT

14. (a) In its operation of the Project, the United States will use all reasonable means to guard against a condition of shortage in the quantity of Project Water available for release pursuant to this Contract. Nevertheless, if a shortage does occur during any Year because of drought, or other causes which, in the opinion of the Contracting Officer, are beyond the control of the United States, no liability shall accrue against the United States or any of its officers, agents, or employees for any damage, direct or indirect, arising therefrom.

(b) In any Year that the Contracting Officer determines that there is a shortage in the quantity of water available to customers of the United States from the Project, the Contracting Officer will apportion available water among the Water Users in such manner as he deems equitable and physically possible consistent with existing contracts and Project authorizations. During such

water short Years, the quantity of acreage the Contractor may irrigate from the Drain shall be reduced to the extent determined by the Contracting Officer to be necessary to reduce the quantity of Project Water released pursuant to this Contract to a level consistent with deliveries to other Project users.

#### GENERAL OBLIGATION-BENEFITS CONDITIONED UPON PAYMENT

15. (a) The obligation of the Contractor to pay the United States as provided in this Contract is a general obligation of the Contractor notwithstanding the manner in which the obligation may be distributed among the Contractor's Water Users and notwithstanding the default of individual Water Users in their obligations to the Contractor.

(b) The payment of charges becoming due hereunder is a condition precedent to receiving benefits under this Contract. The United States shall not make water available to the Contractor through Project facilities during any period in which the contractor may be in arrears in the advance payment of water rates due the United States. The Contractor shall not furnish water made available pursuant to this Contract for lands or parties which are in arrears in the advance payment of water rates levied or established by the Contractor.

#### CHARGES FOR DELINQUENT PAYMENTS

16. (a) The Contractor shall be subject to interest, administrative and penalty charges on delinquent installments or payments. When a payment is not received by the due date, the Contractor shall pay an interest charge for each day the payment is delinquent beyond the due date. When a payment becomes 60 days delinquent, the Contractor shall pay an administrative charge to cover additional costs of billing and processing the delinquent payment. When a payment is delinquent 90 days or more, the Contractor shall pay an additional penalty charge of 6 percent per year for each day the payment is delinquent beyond the due date. Further, the Contractor shall pay any fees incurred for debt collection services associated with a delinquent payment.

(b) The interest charge rate shall be the greater of the rate prescribed quarterly in the Federal Register by the Department of the Treasury for application to overdue payments, or the interest rate of 0.5 percent per month prescribed by section 6 of the Reclamation Project Act of 1939 (Public Law 76-260). The interest charge rate shall be determined as of the due date and remain fixed for the duration of the delinquent period.

(c) When a partial payment on a delinquent account is received, the amount received shall be applied, first to the penalty, and second to the administrative charges, ~~second,~~ third to the accrued interest, and ~~third~~ finally to the overdue payment.

#### QUALITY OF WATER

17. The operation and maintenance of Project facilities shall be performed in such manner as is practicable to maintain the quality of raw water made available through such facilities at the highest level reasonably attainable as determined by the Contracting Officer. The United States does

not warrant the quality of water and is under no obligation to construct or furnish water treatment facilities to maintain or better the quality of water.

#### WATER AND AIR, POLLUTION CONTROL

18. The Contractor, in carrying out this Contract, shall comply with all applicable water and air pollution laws and regulations of the United States and the State of California, and shall obtain all required permits or licenses from the appropriate Federal, State, or local authorities.

#### WATER CONSERVATION

19. ~~Within six months following the date of execution of this Contract, the Contractor shall develop an effective water conservation program consistent with the current "Guidelines for the Development of Irrigation Water Conservation Plans" and acceptable to the Contracting Officer. The water conservation program shall contain definite water conservation objectives, appropriate economically feasible water conservation measures, and time schedules for meeting those objectives. At subsequent 5-year intervals, the Contractor shall submit a report on the results of the program to the Contracting Officer for review. Based on the conclusions of the review, the Contracting Officer and the Contractor shall consult and agree to continue or to revise the existing water conservation program.~~

(a) Prior to the diversion of Project Water, the Contractor shall be implementing an effective water conservation and efficiency program based on the Basin-Wide Water Management Plan and/or Contractor's water conservation plan that has been determined by the Contracting Officer to meet the conservation and efficiency criteria for evaluating water conservation plans established under Federal law. The water conservation and efficiency program shall contain definite water conservation objectives, appropriate economically feasible water conservation measures, and time schedules for meeting those objectives. Continued diversion of Project Water pursuant to this Contract shall be contingent upon the Contractor's continued implementation of such water conservation program. In the event the Contractor's water conservation plan or any revised water conservation plan completed pursuant to subdivision (c) of Article 29 of this Settlement Contract have not yet been determined by the Contracting Officer to meet such criteria, due to circumstances which the Contracting Officer determines are beyond the control of the Contractor, Project Water deliveries

shall be made under this Contract so long as the Contractor diligently works with the Contracting Officer to obtain such determination at the earliest practicable date, and thereafter the Contractor immediately begins implementing its water conservation and efficiency program in accordance with the time schedules therein.

(b) The Contractor shall submit to the Contracting Officer a report on the status of its implementation of the water conservation plan on the reporting dates specified in the then existing conservation and efficiency criteria established under Federal law.

(c) At 5-year intervals, the Contractor shall revise its water conservation plan to reflect the then current conservation and efficiency criteria for evaluating water conservation plans established under Federal law and submit such revised water management plan to the Contracting Officer for review and evaluation. The Contracting Officer will then determine if the water conservation plan meets Reclamation's then current conservation and efficiency criteria for evaluating water conservation plans established under Federal law.

#### CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

20. The expenditure or advance of any money or the performance of any obligation of the United States under this Contract shall be contingent upon appropriation or allotment of funds. Absence of appropriation or allotment of funds shall not relieve the Contractor from any obligations under this Contract. No liability shall accrue to the United States in case funds are not appropriated or allotted.

#### OFFICIALS NOT TO BENEFIT

21. (a) No Member of or Delegate to Congress, Resident Commissioner, or official of the Contractor shall benefit from this Contract other than as a Water User or landowner in the same manner as other Water Users or landowners.

(b) No officer or member of the governing board of the Contractor shall receive any benefit that may arise by reason of this Contract other than as a landowner within the Contractor's service area and in the same manner as other landowners within the said service area.

ASSIGNMENT LIMITED-SUCCESSORS AND ASSIGNS OBLIGATED

22. The provisions of this Contract shall apply to and bind the successors and assigns of the parties hereto, but no assignment or transfer of this Contract or any right or interest therein shall be valid until approved in writing by the Contracting Officer.

BOOKS, RECORDS AND REPORTS

23. The Contractor shall establish and maintain accounts and other books and records pertaining to administration of the terms and conditions of this Contract, including: the Contractor's financial transactions, water supply data, and Project land and right-of-way use agreements; the Water Users' land-use (crop census), landownership, land-leasing and water-use data; and other matters that the Contracting Officer may require. Reports thereon shall be furnished to the Contracting Officer in such form and on such date or dates as the Contracting Officer may require. Subject to applicable Federal laws and regulations, each party to this Contract shall have the right during office hours to examine and make copies of the **each** other's party's books and **official** records relating to matters covered by this Contract.

CONFIRMATION OF CONTRACT

24. The Contractor, after the execution of this Contract, shall promptly seek to secure a decree of a court of competent jurisdiction of the State of California, confirming the execution of this Contract. The Contractor shall furnish the United States a certified copy of the final decree, the validation proceedings and all pertinent supporting records of the court approving and confirming this Contract, and decreeing and adjudging it to be lawful, valid, and binding on the Contractor. This Contract shall not be binding on the United States until such final decree has been secured.

EQUAL OPPORTUNITY

25. During the performance of this Contract, the contractor agrees as follows:

(a) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Contracting Officer setting forth the provisions of this nondiscrimination clause.

(b) The Contractor will, in all solicitation, or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without discrimination because of race, color, religion, sex, or national origin.

(c) The Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the Contracting Officer, advising the said labor union or workers' representative of the Contractor's commitments under Section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(d) The Contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965, as amended, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(e) The Contractor will furnish all information and reports required by said amended Executive Order and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the Contracting Officer and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(f) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this Contract or with any of the said rules, regulations, or orders, this Contract may be canceled, terminated, or suspended, in whole or in part, and the Contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in said amended Executive Order, and such other sanctions may be imposed and remedies invoked as provided in said Executive Order, or by rule, regulation, or orders of the Secretary of Labor, or as otherwise provided by law.

(g) The Contractor will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by the rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of said amended Executive Order, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provision, including sanctions for noncompliance: Provided, however, that in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

#### COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

26. (a) The Contractor shall comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), Section 504 of the Rehabilitation Act of 1975 (P.L. 93-112, as amended), the Age Discrimination Act of 1975 (42 U.S.C. 6101, et seq.) and any other applicable civil rights laws, as well as with their respective implementing regulations and guidelines imposed by the U.S. Department of the Interior and/or Bureau of Reclamation.

(b) These statutes require that no person in the United States shall, on the grounds of race, color, national origin, handicap, or age, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving financial assistance from the Bureau of Reclamation. By executing this Contract, the Contractor agrees to

immediately take any measures necessary to implement this obligation, including permitting officials of the United States to inspect premises, programs, and documents.

(c) The Contractor makes this agreement in consideration of and for the purpose of obtaining any and all Federal grants, loans, contracts, property discounts or other Federal financial assistance extended after the date hereof to the Contractor by the Bureau of Reclamation, including installment payments after such date on account of arrangements for Federal financial assistance which were approved before such date. The Contractor recognizes and agrees that such Federal assistance will be extended in reliance on the representations and agreements made in this article, and that the United States reserves the right to seek judicial enforcement thereof.

### PRIVACY ACT COMPLIANCE

27. (a) The Contractor shall comply with the Privacy Act of 1974 (5 U.S.C. 552a) (the Act) and the Department of the Interior rules and regulations under the Act (43 CFR 2.45 et seq.) in maintaining Landholder acreage certification and reporting records, required to be submitted to the Contractor for compliance with Sections 206 and 228 of the Reclamation Reform Act of 1982 (96 Stat. 1266), and pursuant to 43 CFR 426.18.

(b) With respect to the application and administration of the criminal penalty provisions of the Act (5 U.S.C. 552a(i)), the Contractor and the Contractor's employees responsible for maintaining the certification and reporting records referenced in (a) above are considered to be employees of the Department of the Interior. See 5 U.S.C. 552a(m).

(c) The Contracting Officer or a designated representative shall provide the Contractor with current copies of the Interior Department Privacy Act regulations and the Bureau of Reclamation Federal Register Privacy Act System of Records Notice (Acreage Limitation--Interior, Reclamation-31) which govern the maintenance, safeguarding, and disclosure of information contained in the Landholder's certification and reporting records.

(d) The Contracting Officer shall designate a full-time employee of the Bureau of Reclamation to be the System Manager who shall be responsible for making decisions on denials pursuant to 43 CFR 2.61 and 2.64 amendment requests pursuant to 43 CFR 2.72. The Contractor is authorized to grant requests by individuals for access to their own records.

(e) The Contractor shall forward promptly to the System Manager each proposed denial of access under 43 CFR 2.64; and each request for amendment of records filed under 43 CFR 2.71; notify the requester accordingly of such referral; and provide the System Manager with information and records necessary to prepare an appropriate response to the requester. These requirements do not apply to individuals seeking access to their own certification and reporting forms filed with the Contractor pursuant to 43 CFR 426.18, unless the requester elects to cite the Privacy Act as a basis for the request.

NOTICES

28. Any notice, demand, or request authorized or required by this Contract shall be deemed to have been given, on behalf of the Contractor, when mailed, postage prepaid, or delivered to the Regional Director, Mid-Pacific Region, Bureau of Reclamation, 2800 Cottage Way, Sacramento, California 95825-1898, and on behalf of the United States, when mailed, postage pre-paid, or delivered to the Board of Directors of the Colusa Drain Mutual Water Company, P.O. Box 329 (520 Market Street, Suite 3) Colusa, California 95932. The designation of the addressee or the address may be changed by notice given in the same manner as provided in this article for other notices.

IN WITNESS WHEREOF, the parties hereto have executed this Contract the day and year hereinabove written.

THE UNITED STATES OF AMERICA

By \_\_\_\_\_

COLUSA DRAIN MUTUAL WATER COMPANY

(SEAL)

By \_\_\_\_\_  
President

Attest:

\_\_\_\_\_  
Secretary

Contract No. 8-07-20-W0693-R1

Exhibit A

(map of service area)

Colusa Drain Mutual Water Company

Exhibit B

Colusa Drain Mutual Water Company

CROP IRRIGATION REQUIREMENT 1/  
(Acre-Feet per acre)

Month	Alfalfa <u>1/</u>	Pasture <u>1/</u>	General <u>2/</u>	Rice <u>3/</u>
April	.250	.283	0	0
May	.442	.483	0	.567
June	.567	.608	.292	.717
July	.642	.658	.783	.783
August	.575	.558	.550	.650
September	.150	.350	0	.200
Total	2.626	2.940	1.625	2.917

Noncrop Consumptive Use Factor: 10 percent.

1/ Based on Department of Water Resources (DWR) Bulletin 113-3, Page 37, with effective rain discounted.

2/ General, assumed to be corn, DWR Bulletin 113-3, Page 37, with effective rain discounted.

3/ Based on University of California Special Publication 3271, growing season May 1 – September 23, and pan evaporation, DWR Bulletin 113-3, Page 67 and DWR Bulletin 113-3, Page 37.

Exhibit C

Colusa Drain Mutual Water Company

WATER RIGHT DEFICIENCIES 1/

Month	Pre-1938	Post-1938
June	6%	19%
July	55%	87%
August	90%	100%
September	5%	99%

1/ These figures represent an average of the deficiencies computed in the studies identified as C650B (State of California) and C-2BR (Bureau of Reclamation) on the water rights along the Sacramento River and in the Sacramento-San Joaquin Delta. These studies were accomplished pursuant to the 1956 Cooperative Study Program between the Bureau of Reclamation, California State Department of Water Resources, and the Sacramento River and Delta Water Association.

Exhibit D  
Colusa Drain Mutual Water Company  
**WATER RATES AND CHARGES**

*Note: Rates and Charges shown are 2003 rates. This exhibit will be updated prior to execution of the contract to reflect the Rates and Charges for 2004.*

COST OF SERVICE RATES:	<u>Per Acre-Foot</u>
Capital Rates	
Storage	\$2.93
O&M Rates:	
Water Marketing	\$6.28
Storage	\$5.57
Deficit Rates:	
Interest Bearing	\$0.46
CFO/PFR Adjustment Rate 1/	<u>\$4.38</u>
<b>TOTAL</b>	<b><u>\$19.62</u></b>

**FULL-COST RATES:**

Section 202(3) Rate is applicable to a Qualified Recipient or to a Limited Recipient receiving irrigation water on or before October 1, 1981. \$27.16

Section 205(a)(3) Rate is applicable to a Limited Recipient that did not receive irrigation water on or before October 1, 1981. \$30.08

**CHARGES UNDER P.L. 102-575 TO THE RESTORATION FUND 2/**

Restoration Payments (3407(d)(2)(A)) \$7.69

1/ Chief Financial Officer (CFO) adjustment and Provision for Replacement (PFR) expense is being distributed over a 5-year period beginning in FY 2003 for those contractors that requested those costs be deferred.

2/ Restoration fund charges are payments in addition to the water rates and were determined pursuant to Title XXXIV of Public Law 102-575. Restoration fund charges are on a fiscal year basis (10/1 - 9/30).